filed
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IN THE

# Supreme Court of the United States

October Term, 1979

No. 79-1464

SAMMY LEON WILLIS,
*Petitioner,*

V.

COMMONWEALTH OF VIRGINIA,
*Respondent.*

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

THOMAS W. MOSS, JR.
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Norfolk, Virginia 23510
*Counsel for Petitioner*

March 3, 1980

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In The

SUPREME COURT OF THE UNITED STATES

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No. -------

SAMMY LEON WILLIS,
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v.

COMMONWEALTH OF VIRGINIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

Petitioner respectfully seeks the grant of a writ of certiorari, vacation of the judgment below, in light of the Fourth Amendment to the Constitution of the United States.

OPINION BELOW

There was a denial of the Petition for Appeal to the Supreme Court of Virginia without opinion. The case was

commenced in the Circuit Court of the City of Norfolk where it was decided without opinion.

## JURISDICTION

The Supreme Court of Virginia denied the Petition for Appeal on December 3, 1979. Jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

## QUESTION PRESENTED

Whether the evidence introduced at the trial of the matter was obtained by an illegal search and seizure without a warrant in violation of the Fourth Amendment to the Constitution of the United States.

## CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue,



> but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

## STATEMENT OF THE CASE

Sometime in October, 1977, a police informant indicated to an officer of the Norfolk, Virginia Police Department that he had a contact in Texas who could supply him with marijuana and who had brought marijuana into the Norfolk area on prior occasions. On October 20, 1977, the informant made a call from police headquarters to an unidentified number supposedly in Texas. Based on the informant's version of the phone conversation, it was an invitation on the part of the informant to the Defendant for the Defendant to bring marijuana to Norfolk for sale.

On November 13, 1977, at approximately 6:30 p.m., the police officer was con-

tacted by the informant. The officer, along with five other officers, met with the informant at a designated place in Norfolk. At that time the informant stated that he had received a phone call from the Petitioner to the effect that he was staying in Room 117 at the Airport Motor Inn in Norfolk, and that he had 100 pounds of marijuana and wanted to deal. Based on the representation that the informant did not know where the marijuana was, the police decided to send the informant to the Motor Inn and observe.

The informant arrived at the Motel room at approximately 8:05 p.m. The police had positioned two officers in an unmarked car approximately four to five doors down from the motel room. Two additional officers were across the street. All officers were able to see the motel room and the camper of the



Defendant. One additional officer was stationed down the street to make contact with the informant after he left the motel room.

The informant remained in the motel room for about 25 minutes. During that time, there were two separate trips made by unidentified males from the room to the camper. One returned to the room carrying a plastic bag.

The police testified that the plan was for the informant to meet the police with the marijuana that had been "fronted" to him, allow some time to pass, give the informant money to return to the motel room and get some more marijuana and then secure a search warrant. The police further testified that their plans had to change when the camper unexpectedly left the motel parking lot at the same time as the informant.

The police followed the camper to a

restaurant where the occupants obtained food from the drive-up window. The camper then proceeded to drive away and the police then decided to stop the vehicle.

The camper was stopped after a short distance at approximately 9:45 p.m. The occupants were immediately arrested for possession of marijuana with intent to distribute. The occupants were searched and placed in separate police cars.

The evidence was unclear as to whether the camper was seized and then searched or searched and then seized. In any event, at least three officers thoroughly searched the interior of the camper portion of the vehicle. The officer testified that they searched for "approximately ten minutes" without finding anything although the officer "could smell from my past experience what I believed to be marijuana".



Finally the officer dismantled a dresser built in a frame underneath a bed in the front of the camper compartment. After dismantling the dresser, the officer shook the dresser frame itself, found it loose, and then pulled it out from the frame that held up the bed. Then, looking into the cavity created by dismantling the dresser and its frame, the officer observed a plywood wall. The seams of the wall were covered with what the officer termed "plumber's tape". Upon opening the door there was a compartment next to the back of the cab where a number of closed, opaque plastic bags were found. Upon opening the bags, the officers found the substance believed by them to be marijuana.

A motion to suppress the seized marijuana was made at trial and denied. A subsequent appeal to the Supreme Court

of Virginia based in part on the denial of the motion to suppress was denied.

REASONS FOR GRANTING THE PETITION

The Fourth Amendment to the Constitution of the United States reads as follows: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized", U.S. Const., Amend. IV. The fundamental guarantee of this amendment has long been interpreted by the courts to mean that "searches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment - subject only to a few specifically es-



tablished and well-delineated exceptions", Katz v. U.S., 389 U.S. 347, 357 (1967).

Under the facts of the instant case, there can be no serious contention that the search of the subject vehicle was "incident to arrest", although one police officer justified it in that way. If the Commonwealth seeks to justify the search of the vehicle under this "exception" there can be no doubt that the search and seizure were illegal. Chimel v. California, 395 U.S. 752 (1969).

It would appear that the Commonwealth's contention that the search without a warrant in this case was legal is based upon the doctrine first enunciated in Carroll v. United States, 267 U.S. 132 (1924) and later elaborated in Chambers v. Maroney, 399 U.S. 42 (1970). Succinctly stated, that doctrine is that a warrantless search of a motor vehicle

may be made based on probable cause to believe the vehicle contains contraband or fruits of a crime along with what is termed "exigent" circumstances. As probable cause is the first hurdle to be overcome, it will be discussed first.

The cases recognizing the probable cause exception to the warrant requirement have always insisted that the officers conducting the search have "reasonable or probable cause" to believe that they will find the instrumentalities of a crime or evidence pertaining to a crime as a prerequisite to dispensing with a warrant. Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968). It is now well recognized that hearsay may form the basis of probable cause. In the case of a warrant, it is clear that when an officer seeks to obtain a warrant he must state sufficient underlying facts to create a substantial



basis for crediting the hearsay. McCray v. Illinois, 386 U.S. 300 (1967), reh. den. 386 U.S. 1042; Rugendorf v. U.S., 376 U.S. 528 (1964), reh. den. 377 U.S. 940.

When dealing with information supplied by an informant, in order to obtain a warrant, the rule supplied by the Supreme Court of the United States has been interpreted to require that the informant have a reputation for reliability and that the affidavit include some factual information independently corroborative of the hearsay report. Manley v. Commonwealth, 211 Va. 146 (1970). See 68 Am.Jur.2d Searches & Seizures §65 and cases cited therein. While the foregoing statement is taken in the context of securing a warrant, the Supreme Court has clearly stated that the standards applicable to the factual basis supporting an officer's probable cause

assessment at the time of a warrantless arrest and search are at least as stringent as the standards applied with respect to a magistrates assessment as a prelude to issuing an arrest or search warrant. Whitley v. Warden, Wyoming State Penitentiary, 401 U.S. 560 (1971).

In the case at bar, the Commonwealth strictly relied upon the hearsay testimony of one police officer in attempting to establish probable cause for the arrest, search and seizure.

The testimony was based almost entirely on information related to him by an informant.

As the Whitley case applies the same standards of probable cause on warrants and warrantless arrests and searches, the Commonwealth in presenting its evidence on probable cause had to show some basis for the contention that the information given by the informant was re-



liable. Not one shred of evidence was offered to show the reliability of the informant. There was no testimony as to the informant's general reputation for reliability. There was no testimony to the effect that he had previously supplied information to the police that had led to arrests. The only testimony submitted was to the effect that the police came in contact with the informant by virtue of him being arrested for a felony and that he had probably been convicted of a felony before.

The Commonwealth conceded that the information supplied by the informant never in and of itself constituted probable cause. To surmount this obstacle the Commonwealth contended that probable cause came through "independent verification" of events as seen through the eyes of an "experienced police officer". However, what where the facts that were

that were independently verified?

The officers verified that a motel room was occupied. They verified that there was a camper in front of the door. They verified that two separate men, neither being the informer, went into the camper and that one carried some sort of bag into the room. No amount of "experience", even coupled with the information supplied by the informant, can turn these events into probable cause to believe that any crime is being committed. Such acts as these cannot be compared to the exchange of money for a small envelope on the street corner. The events perceived by the officers are nothing more than common, everyday events of life. Certainly, these events would not be sufficient for a neutral and detached magistrate to issue a warrant. As Mr. Justice Jackson wrote in Johnson v. United States, 333



U.S. 10, 13-14:

> "The point of the Fourth Amendment which often is not grasped by zealous officers, is not that it denies the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime."

The only thing that would appear to approach giving the officers probable cause is the allegations dealing with the "bag" seen carried into the room by an unidentified individual. One officer testified that another officer informed him that an individual carried a plastic bag into the room. He then testified that he observed three individuals exit the room, get into the camper and drive to the informant's car where the informant got into his

own car and drove off. There was no mention of the bag being taken by the informer. At this point in time the bag had disappeared.

The officer who observed the above then testified that he received a radio message from a third officer that the informant had given him a bag containing approximately five pounds of suspected marijuana.

The question must be asked. What bag? No garbage bag containing marijuana allegedly received from the informant was ever offered into evidence. The bag disappeared. The cornerstone of the Commonwealth's probable cause is based purely on hearsay testimony, easily capable of being verified, but it was not.

Certainly no subsequent actions of the Defendant gave to police probable cause to even stop the vehicle. The



vehicle violated no traffic laws nor did it do anything unusual to indicate its involvement in any illegal activity.

Assuming, but not admitting, that the information available at the time the police stopped the vehicle was sufficient to constitute probable cause, the Commonwealth failed to carry the burden of proving exigent circumstances. "The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears". Coolidge v. New Hampshire, 403 U.S. 443, 461-2 (1971). Absent exigent circumstances, no amount of probable cause can justify a warrantless search. Id p. 468.

The original basis for the so-called "automobile exception" is found in the rationale that exigent circumstances exist because an automobile is movable, the occupants are alerted and the vehicle's contents may never be found

again if the police must first obtain a warrant. Coolidge v. New Hampshire, supra; Chambers v. Maroney, supra. Additionally, courts have relied on what has been termed the "lesser expectation of privacy associated with automobiles". Eg, U.S. v. Trejo-Zambrano, 582 F.2d 460 (9th Cir. 1978); U.S. v. Polk, 433 F.2d 644 (5th Cir. 1970). The justification for a warrantless search based on mobility will be explored first and then the expectation of privacy will be discussed.

If the word "automobile" is really not a talisman in whose presence the Fourth Amendment disappears, and if the need for exigent circumstances is a practical requirement with real meaning, it would seem elementary that once all chance of loss of the vehicle has passed, it is no longer mobile and is secure as any residence as if it were permanently affixed



to the ground, the warrant requirement of the Fourth Amendment must come into play.

In the instant case, the subject vehicle was stopped on a public highway; the two sole occupants of the vehicle were arrested; the keys were taken from the occupants; the vehicle was apparently seized; there were at least five officers at the scene, uniformed and plain clothes; both the occupants and the vehicle were under the complete dominion and control of the police so that there was nothing to prevent the officers from obtaining a warrant. In short, everything possible was done to secure the vehicle, save bolting it to the ground. There was no reason to believe anyone involved. The vehicle was as secure as any permanent dwelling.

It should be noted that at least one State Supreme Court has held that a war-

rantless search of a motor vehicle was invalid because of the combination of six police officers at the scene, immobilization of the vehicle by removal of the keys and occupants, and a present ability to obtain a warrant. Shanks v. Commonwealth, 574 S.W.2d, 688 (Ky.App. 1978).

In the case at bar, the Commonwealth gave but one reason for failing to attempt to obtain a warrant - inconvenience. The unequivocal testimony of the Commonwealth's witness was that absolutely nothing was present to prevent the obtaining of a warrant except that to do so would entail something like a one and one-half hour delay. Surely that testimony from the Commonwealth's own witness totally and completely negates any contention that exigent circumstances existed. Here it was reasonably practical to obtain a warrant as re-



quired by Carroll and even if there was probable cause, there were no exigent circumstances as required by Coolidge. Certainly, the Fourth Amendment is too important to be disregarded by an hour and one-half delay. That same delay would apply in the case of a residence. However, the Virginia Supreme Court would not accept such a reason. See, Lugar v. Commonwealth 214 Va. 609 (1974).

In addition to the exigent circumstances rationale for the "automobile exception" to the Fourth Amendment, courts have often made reference to the lesser expectation of privacy associated with automobiles. Eg. U.S. v. Tresjo-Zambrano, supra; United States v. Alden, 576 F.2d 772 (8th Cir. 1978); United States v. Young, 567 F.2d 799 (8th Cir. 1977); U.S. v. Helberg, 565 F.2d 993 (8th Cir. 1977); U.S. v. Polk, 433 F.2d

644 (5th Cir. 1970). As one court stated, there is a lesser expectation of privacy because "automobiles rarely serve as a repository of personal effects, have their contents partially exposed to the public, and are subject to extensive regulation and inspection." U.S. v. Tresjo-Zambrano, supra.

Just as the Fourth Amendment prohibitions had to evolve to meet the unique problems initially presented by the advent of the automobile, the role of the Fourth Amendment's application must again be re-evaluated in light of the changing role and uses of motor vehicles. No longer is a motor vehicle simply a means of transportation from one point to another. In today's society, motor vehicles are often designed not only as repositories for personal effects, but as self-contained or semi-self-contained living quarters. This is the type of



vehicle concerned in the instant case.

The vehicle concerned herein was a camper. It was equipped with drawers for the storing of clothing and even a bed. Certainly there is as much, if not more, of an expectation of privacy in a camper as there is in a suitcase in a car, U.S. v. Stevie, 582 F.2d 1175 (8th Cir. 1978) or a footlocker, U.S. v. Trejo-Zambrano, supra. In both the case of the footlocker and the suitcase, the courts held that a warrant was necessary.

While such statement is generally true, it is not always so. Viewed with particular reference to the facts in this case, there is little difference in the actions of the police in their search of the camper and the search of the footlocker, a suitcase or even a home. To say that the police could dismantle a dresser built into a bed, and begin to dismantle the camper without a warrant,

but say that a warrant would have to be obtained to search a footlocker in the middle of the camper floor would be almost incredible.

Some delineation must be made with reference to the modern day recreational vehicle. Such vehicles are, in effect, homes on wheels. Of course, to suggest that a court must make rules for the police to follow along the lines of saying that whether or not you need a warrant depends upon the size and interior furnishings of a vehicle is unworkable. Further, it is unnecessary. Carroll laid down the rule that should be followed: "In cases where securing a warrant is reasonably practical it must be used". Carroll, supra, at 156.

With particular reference to the distinction between an ordinary automobile and a recreational vehicle, reference must be made to the case of U.S. v.



Lavender, 602 F.2d, 639. It was held in that case that a recreational vehicle was a residence for the purpose of invoking §18.2-91 of the Code of Virginia, 1950, as amended (Statutory Burglary). Having once clothed a vehicle with the status of a home for the purpose of imposing criminal sanctions and then to deny such status to the Fourth Amendment to the United States Constitution is totally illogical.

In addition to the foregoing, it must be noted that the search in the instant case far exceeded the scope of the normal vehicle search. Indeed, the expanded nature of the search appears to have been necessitated by the residential nature of the vehicle itself. There must be some limit to the extent of any search. Although there are no clear guidelines as to the scope of the search, certainly, the dismantling of a

vehicle exceeds that scope.

In the instant case the officers searched for some time without finding anything. The Commonwealth's own evidence showed that the police had information that there was no set pattern as to where the suspect would keep the marijuana. Yet the officers continued to search. It was only after the officers dismantled the dresser, a place where 100 pounds of marijuana could not be kept, removed the actual frame from under the bed, removed seam tape from the structure of the camper and opened up the frame of the camper body was anything found. The search was an exploratory one. There must be some limit to the scope of a search. To allow the police to take apart a vehicle without even the benefit of a warrant, is unreasonable, and the fruits of that search must be suppressed.



## CONCLUSION

The judgment of conviction was erroneous. The trial court erred in overruling Defendant's motion to suppress the evidence as it was obtained by virtue of an illegal search in violation of the Fourth Amendment to the Constitution of the United States. The trial court erred in overruling Defendant's motion to suppress the evidence as it was obtained by virtue of an illegal seizure in violation of the Fourth Amendment to the Constitution of the United States.

The conviction below should be reversed and the charge against the Petitioner dismissed.

Respectfully submitted,

Thomas W. Moss, Jr.
Moss, Moss & Sizemore
1505 First Virginia Bank Tower
Norfolk, Virginia 23510

March 3, 1980

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March, 1980, four copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to J. Marshall Coleman, Attorney General for the Commonwealth of Virginia, Supreme Court Building, 1101 E. Broad Street, Richmond, Virginia, 23219. I further certify that all parties required to be served have been served.

Thomas W. Moss, Jr.
1505 First Virginia Bank Tower
Norfolk, Virginia 23510
Counsel for Petitioner

Supreme Court, U. S.
FILED
MAR [illegible] 198
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1464

SAMMY LEON WILLIS,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

# APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

Thomas W. Moss, Jr.
Moss, Moss, & Sizemore
1505 First Virginia Bank Tower
Norfolk, Virginia 23510
Counsel for Petitioner

March 3, 1980

VIRGINIA:

In the Circuit Court of the City of Norfolk, on the 11th day of October, in the year 1978

COMMONWEALTH vs. SAMMY LEON WILLIS

Attorney for the Commonwealth: Lawrence C. Lawless

Attorney for the defendant: Thomas W. Moss, Jr. et al

( ) Heretofore appointed by the Court

( X ) Of defendant's own choosing

FELONY SENTENCING ORDER

This day again came the Attorney for the Commonwealth and the attorney for the defendant, as aforesaid, and came as well the defendant in person, who stands convicted of Possession of Marijuana with Intent to Distribute.

Thereupon the Probation Officer of this Court, to whom this case has been previously referred for investigation, appeared in open court with a written report, a copy of which has been delivered to counsel for the defendant. Whereupon the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is hereby filed as a part of the record in this case. Whereupon it being demanded of the defendant if anything he had to say for himself why the Court should not here and now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay of judgment; and the Court having taken into consideration all of the evidence in the case, the report of the Probation Officer, and such additional facts as were presented by the defendant; it is accordingly the judgment of this Court that the defen-

dant be and he is hereby sentenced to confinement in the Penitentiary of this Commonwealth for the term of Ten Years and fined in the sum of $5,000.00 for Possession of Marijuana with Intent to Distribute as charged in indictment #1, subject to credit for time spent in jail awaiting trial, and that he be required to pay the costs of his prosecution.

It is ordered that the transcript of testimony, when prepared, be made a part of the record in this case. Thereupon the defendant, by counsel, moved the Court for time in which to apply for a writ of error to the foregoing judgment, which motion being fully heard and determined by the court, is sustained, and the execution of the foregoing judgment is hereby postponed for the period of Thirty Days or until the Supreme Court of Virginia shall deny said writ if prior thereto. The Court certifies that at all times during the trial of this case the defendant was personally present and his attorneys were likewise personally present and capably represented the defendant. Thereupon on further motion of the defendant by counsel, bail bond remains as fixed in the amount of Ten Thousand Dollars ($10,000.00) cash deposit with the Court.

And the defendant was allowed to depart pursuant to the terms of his recognizance.

(Court Reporter Sharon Borden)

John W. Winston, Judge

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 3rd day of December, 1979.

Sammy Leon Willis,

Appellant,

against Record No. 790692
Circuit Court No. F1157-78

Commonwealth of Virginia,

Appellee.

From the Circuit Court of the City of Norfolk.

Finding no reversible error in the judgment complained of, the court refuses the petition for appeal filed in the above-styled case.

Supreme Court, U. S.
FILED
MAY 21 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1464

SAMMY LEON WILLIS,
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v.

COMMONWEALTH OF VIRGINIA,
Respondent.

# RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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May 23, 1980

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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QUESTION PRESENTED

Whether the evidence introduced at the trial of the matter was obtained by an illegal search and seizure without a warrant in violation of the Fourth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Sometime in October, 1977, a police informant indicated to an officer of the Norfolk,



Virginia Police Department that he had a contact in Texas who could supply him with marihuana and who had brought marihuana into the Norfolk area on prior occasions. On October 20, 1977, the informant made a call from police headquarters to a number in Texas. Based on the informant's version of the phone conversation, it was an invitation on the part of the informant to the Defendant for the Defendant to bring marihuana to Norfolk for sale.

On November 13, 1977, at approximately 6:30 p.m., the police officer was contacted by the informant. The officer, along with five other officers, met with the informant at a designated place in Norfolk. At that time the informant stated that he had received a phone call from the Petitioner to the effect that he was staying in Room 117 at the Airport Motor Inn in Norfolk, and that he had 100 pounds of marihuana and wanted to deal. Based on the representation that the informant did not know where

the marihuana was, the police decided to send the informant to the Motor Inn and observe.

The informant arrived at the motel room at approximately 8:05 p.m. The police had positioned two officers in an unmarked car approximately four to five doors down from the motel room. Two additional officers were across the street. All officers were able to see the motel room and the camper of the Defendant. One additional officer was stationed down the street to make contact with the informant after he left the motel room.

The informant remained in the motel room for about 25 minutes. During that time, there were two separate trips made by unidentified males from the room to the camper. One returned to the room carrying a plastic bag.

The police testified that the plan was for the informant to meet the police with



the marihuana that had been "fronted" to him, allow some time to pass, give the informant money to return to the motel room and get some more marihuana and then secure a search warrant. The police further testified that their plans had to change when the camper unexpectedly left the motel parking lot at the same time as the informant.

The police followed the camper to a restaurant where the occupants obtained food from the drive-up window. The camper then proceeded to drive away and the police then decided to stop the vehicle.

The camper was stopped after a short distance at approximately 9:45 p.m. The occupants were searched and placed in separate police cars.

The evidence was unclear as to whether the camper was seized and then searched or searched and then seized. In any event, at least three officers throughly searched the interior of the camper portion of the

vehicle. The officer testified that they searched for "approximately ten minutes" without finding anything although the officer "could smell from my past experience what I believed to be marihuana".

Finally the officer dismantled a dresser built in a frame underneath a bed in front of the camper compartment. After dismantling the dresser, the officer shook the dresser frame itself, found it loose, and then pulled it out from the frame that held up the bed. Then, looking into the cavity created by dismantling the dresser and its frame, the officer observed a plywood wall. The seams of the wall were covered with what the officer termed "plumber's tape". Upon opening this door there was a compartment next to the back of the cab where a number of closed, opaque plastic bags were found. Upon opening the bags, the officers found the substance believed by them to be marihuana.



A motion to suppress the seized marihuana was made at trial and denied. A subsequent appeal to the Supreme Court of Virginia based in part on the denial of the motion to suppress was denied.

REASONS FOR DENYING THE PETITION

The warrantless search of a motor vehicle is not an unreasonable search, within the constitutional meaning, if made upon probable cause that contraband is contained therein and exigent circumstances are present. The definition of probable cause was restated by the Supreme Court of Virginia in Shaum v. Commonwealth, 215 Va. 498 at p. 500,

> Probable cause, as the very name implies, deals with probabilities. These are not technical; they are the factual and practical considerations in everyday life on which reasonable and prudent men, not legal technicians, act. Probable cause exists when the facts and circumstances within the arresting officer's knowledge and of which he has reasonable trustworthy information are sufficient

> in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.

In the instant case a reliable informant contacted the defendant for the purpose of buying a large quantity of marihuana. The call was made from police headquarters in Norfolk.

Later, the informant notified the police that the defendant was staying at a motel room in Norfolk, and that he had a large quanity of marihuana to sell.

The Police sent the informant to the motel while they observed from a short distance away. The police saw two men walk from the room to a camper parked in the lot and return to the room carrying a large plastic bag. The police planned to have the informant leave the room under the pretense of obtaining money for the buy while the police secured a warrant to search the room. Their plans went awry when the



camper unexpectedly left the motel parking lot. The police followed, and after observing the camper stop at the drive-up window of a fast food restaurant, then proceed to drive away, the police decided to stop the camper. This series of events established sufficient facts to give the police probable cause to stop the camper.

In Draper v. United States, 358 U.S. 307 (1959), the Court held that information provided by an informant to a narcotics agent, although "hearsay", was sufficient to constitute probable cause. The informantion in that case involved a mere description of the defendant's physical attributes and clothing. The instant case had the informant and the police working together at every stage from the initial contact to the motel meeting. Similarly, in Brinegar v. United States, 338 U.S. 160 (1949), the Court held that probable cause existed when the officer's knowledge of illegal

activity was derived from his personal observation and not based entirely or largely on surmise or hearsay. Again, the presence of the police at each stage of the transaction reinforced their belief that a crime would be, and was being committed.

Petitioner asserts that, given the existence of probable cause, respondent failed to carry its burden of proving exigent circumstances. However, this Court has clearly established that, given probable cause, an automobile, because of its mobile nature, may be searched without a warrant. Chambers v. Maroney, 399 U.S. 42 (1970); Carroll v. United States, 267 U.S. 132 (1924).

The petitioner relies upon Coolidge v. New Hampshire, 403 U.S. 443 (1971), where the Court held exigent circumstances did not exist where the car was seized in the driveway of the defendant incidental to his arrest in his home. Respondent respectfully submits



that petitioner misapplies the law in Coolidge, supra, to the facts in the instant case. In Coolidge, the defendant was arrested in the house while police guarded the front and back door, thus rendering it impossible for the defendant to reach his car. After the defendant's arrest, the police maintained an around-the-clock guard of the defendant's premises. Moreover, the police had known for some time of the probable role of the car in the crime, and the defendant knew he was a suspect and was cooperative throughout the investigation. Given the fact that the defendant had ample opportunity to destroy the evidence together with the aforementioned facts, the Court held that exigent circumstances were not present. In the instant case, peitioner was "stopped on the highways", Chambers v. Maroney, supra, at 51, thus forcing the police to act quickly and decisively.

The petitioner is further aggrieved by the scope of the search. The holding in Wescott v. Commonwealth, 216 Va. 123 (1975), relying on Almeda-Sanchez v. United States, 413 U.S. 266 (1973), and Chambers v. Maroney, 399 U.S. 42, reh. denied 400 U.S. 856 (1970), counters that objection. In that case the officer had probable cause to believe that narcotics would be transported in a car driven by the defendant. The Wescott Court held that, given such probable cause, the officer's right to stop and conduct a warrantless search of a moving vehicle extends to the entire car.

This Court has held that in the course of a lawful warrantless search of a motor vehicle, certain objects found therein enjoy a more stringent standard than the vehicle itself. In Arkansas v. Sanders, ____ U.S. ____, 61 L. Ed. 2d 235, 99 S. Ct. ____ (1979), the Court held that a warrant should be obtained to search a suitcase found during



the course of a warrantless search of a taxicab, reasoning that having seized the suitcase from the automobile it no longer possessed the mobile nature of the place from which it was taken. Like reasoning was applied by the Court in United States v. Chadwick, 433 U.S. 1 (1977), where the object in question was a footlocker. Both cases are clearly distinguishable from the case at bar. The instant case involves the moving of a dresser in order to remove paneling of the camper, at which time the marihuana was discovered. Throughout the search the mobile nature of the vehicle necessarily applied to the hidden compartment as part of the structure of the vehicle. These facts closely resemble the facts in Chambers, supra, a search of a concealed compartment under the dashboard, and Carroll, supra, a search behind the upholstering of the seats.

Finally, the petitioner seeks to have this Court delineate special rules for modern day

recreational vehicles, which are characterized as "homes on wheels". The facts in this case clearly reveal the endless ingenuity of the modern day marihuana merchant and strongly commends to this Court the wisdom of the Carroll doctrine and its progeny.

## CONCLUSION

Based on the authorities cited, respondent respectfully submits that petitioner's Writ for Certiorari be denied.

Respectfully submitted,

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May 23, 1980



## CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May, 1980, four copies of the Response to Petition for Writ of Certiorari was mailed, postage prepaid, to Thomas W. Moss, Jr., Counsel for the Petitioner, 1505 First Virginia Bank Tower, Norfolk, Virginia, 23510. I further certify that all parties required to be served have been served.

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